IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16509 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPN. - Petitioner(s)

Versus

S K BELIM - Respondent(s)

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Appearance :

MR DIPEN A DESAI for Petitioner(s) : 1,

MS SNEHA A JOSHI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 17/02/2006

ORAL JUDGMENT

Heard learned advocate Mr. Desai for petitioner and Ms. Sneha Joshi, learned advocate for respondent. Through this petition under Article 227 of Constitution of India, petitioner corporation has challenged award of Industrial Tribunal, Surat in Reference (IT) No. 9 of 1999 dated 10th February, 2003 wherein the Tribunal has set aside order of punishment of stoppage of two increments with cumulative effect and granted benefit to the concerned workman.

2. During the course of hearing, learned advocate Mr. Dipen Desai for petitioner has submitted that the tribunal has committed gross error in setting aside order of punishment. He submits that there is no need to examine passengers once their statement has been recorded in presence of conductor and checking squad. He

relied upon the decision of Hon'ble apex court in State of Haryana versus Ratan Sinh reported in AIR 1977 SC 1512. It was also his submission that the Tribunal has ignored other charges which were levelled against respondent workman, therefore, industrial tribunal has committed gross error in setting aside order of punishment.

3. On the other hand, learned advocate Ms. Sneha Joshi appearing for respondent has submitted that the workman concerned has already retired from service from Bilimora Depot on 30th August, 2004, therefore, this Court, if considers to interfere, then, this Court may consider the case for some punishment on the workman concerned since the workman has retired from service.

4. I have considered the submissions made by the learned advocates for parties. I have also perused award made by tribunal and have also gone through the reasoning given by the tribunal for

setting aside the order of punishment. Learned advocate Mr. Desai is right in submitting that there are certain other allegations made against workman which were totally ignored by the tribunal. He is also right in submitting that the passengers are not necessary to be examined in inquiry once their statement is recorded in presence of conductor by checking squad, therefore, according to my opinion, learned advocate Mr. Desai is right in submitting that the tribunal has not properly appreciated inquiry record and has passed impugned award without proper appreciation of the inquiry record. According to my opinion, looking to the allegations made against workman which were found to be proved according to the findings given by the inquiry officer, some punishment must be imposed against the workman so that he may remember such punishment. It is more so since the tribunal has not imposed any other punishment while setting aside the punishment imposed by the

corporation. However, according to my opinion, since the workman has already retired from service, and at least about more than one and half year has passed, therefore, according to my opinion, that fact should be kept in mind while considering the case for some punishment. According to my opinion, it would be just and proper if punishment of stoppage of one annual increment without cumulative effect is imposed instead of punishment of stoppage of two annual increments with cumulative effect since workman has already retired from service. If the award of tribunal is modified in aforesaid terms, then, it would met ends of justice. Therefore, impugned award made by the tribunal in Reference (IT) NO.9 of 1999 dated 10th February, 2003 is hereby modified to the effect that one annual increment of the workman be stopped without cumulative effect and corporation is directed to pay 50 per cent of arrears of wages or difference of wages from the date of punishment 4th August, 1993 till

the date of retirement to concerned workman. Accordingly, whatever consequential retirement benefit available as a consequence of this order shall be paid by Corporation to respondent workman. Rule is made absolute in terms indicated herein above with no order as to costs.

(H.K. Rathod,J.)

Vyas